

103^D CONGRESS
2^D SESSION

S. 1976

To amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, FEBRUARY 22), 1994

Mr. DODD (for himself, Mr. DOMENICI, Ms. MIKULSKI, Mr. JOHNSTON, and Mr. FAIRCLOTH) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Private Securities Litigation Reform Act of 1994”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PRIVATE SECURITIES LITIGATION

- Sec. 101. Elimination of certain abusive practices.
- Sec. 102. Alternative dispute resolution procedure; time limitation on private rights of action.
- Sec. 103. Plaintiff steering committees.
- Sec. 104. Requirements for securities fraud actions.
- Sec. 105. Amendment to Racketeer Influenced and Corrupt Organizations Act.

TITLE II—FINANCIAL DISCLOSURE

- Sec. 201. Safe harbor for forward-looking statements.
- Sec. 202. Fraud detection and disclosure.
- Sec. 203. Proportionate liability and joint and several liability.
- Sec. 204. Public Auditing Self-Disciplinary Board.

1 **TITLE I—PRIVATE SECURITIES**

2 **LITIGATION**

3 **SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.**

4 (a) RECEIPT FOR REFERRAL FEES.—Section 15(c)
 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c))
 6 is amended by adding at the end the following new para-
 7 graph:

8 “(7) RECEIPT OF REFERRAL FEES.—No broker
 9 or dealer, or person associated with a broker or deal-
 10 er, may solicit or accept remuneration for assisting
 11 an attorney in obtaining the representation of any
 12 customer in any implied private action arising under
 13 this title.”.

14 (b) PROHIBITION ON ATTORNEYS’ FEES PAID FROM
 15 COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of
 16 the Securities Exchange Act of 1934 (15 U.S.C. 78u(d))
 17 is amended by adding at the end the following new para-
 18 graph:

1 “(4) PROHIBITION ON ATTORNEYS’ FEES PAID
2 FROM COMMISSION DISGORGEMENT FUNDS.—Except
3 as otherwise ordered by the court, funds disgorged
4 as the result of an action brought by the Commis-
5 sion in Federal court, or of any Commission admin-
6 istrative action, shall not be distributed as payment
7 for attorneys’ fees or expenses incurred by private
8 parties seeking distribution of the disgorged funds.”.

9 (c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS
10 ACTIONS.—Section 21 of the Securities Exchange Act of
11 1934 (15 U.S.C. 78u) is amended by adding at the end
12 the following new subsections:

13 “(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS
14 ACTIONS.—In an implied private action arising under this
15 title that is certified as a class action pursuant to the Fed-
16 eral Rules of Civil Procedure, the share of any final judg-
17 ment or of any settlement that is awarded to class plain-
18 tiffs serving as the representative parties shall be cal-
19 culated in the same manner as the shares of the final judg-
20 ment or settlement awarded to all other members of the
21 class. Nothing in this subsection shall be construed to
22 limit the award to any representative parties of reasonable
23 compensation, costs, and expenses (including lost wages)
24 relating to the representation of the class.

1 “(j) CONFLICTS OF INTEREST.—In an implied pri-
2 vate action arising under this title that is certified as a
3 class action pursuant to the Federal Rules of Civil Proce-
4 dure, if a party is represented by an attorney who directly
5 owns or otherwise has a beneficial interest in the securities
6 that are the subject of the litigation, the court shall make
7 a determination of whether such interest constitutes a con-
8 flict of interest sufficient to disqualify the attorney from
9 representing the party.

10 “(k) RESTRICTIONS ON SETTLEMENTS UNDER
11 SEAL.—In an implied private action arising under this
12 title that is certified as a class action pursuant to the Fed-
13 eral Rules of Civil Procedure, the terms and provisions
14 of any settlement agreement between any of the parties
15 shall not be filed under seal, except that on motion of any
16 of the parties to the settlement, the court may order filing
17 under seal for those portions of a settlement agreement
18 as to which good cause is shown for such filing under seal.
19 Good cause shall only exist if publication of a term or pro-
20 vision of a settlement agreement would cause direct and
21 substantial harm to any person.

22 “(l) RESTRICTIONS ON PAYMENT OF ATTORNEYS’
23 FEES FROM SETTLEMENT FUNDS.—In an implied private
24 action arising under this title that is certified as a class
25 action pursuant to the Federal Rules of Civil Procedure,

1 attorneys' fees awarded by the court to counsel for the
2 class shall be determined as a percentage of the amount
3 of damages and prejudgment interest actually paid to the
4 class as a result of the attorneys' efforts. In no event shall
5 the amount awarded to counsel for the class exceed a rea-
6 sonable percentage of the amount recovered by the class
7 plus reasonable expenses.

8 “(m) DISCLOSURE OF SETTLEMENT TERMS TO
9 CLASS MEMBERS.—In an implied private action arising
10 under this title that is certified as a class action pursuant
11 to the Federal Rules of Civil Procedure, a proposed settle-
12 ment agreement that is published or otherwise dissemi-
13 nated to the class shall include the following statements,
14 which shall not be admissible for purposes of any Federal
15 or State judicial or administrative proceeding:

16 “(1) STATEMENT OF POTENTIAL OUTCOME OF
17 CASE.—

18 “(A) AGREEMENT ON AMOUNT OF DAM-
19 AGES AND LIKELIHOOD OF PREVAILING.—If the
20 settling parties agree on the amount of dam-
21 ages per share that would be recoverable if the
22 plaintiff prevailed on each claim alleged under
23 this title and the likelihood that the plaintiff
24 would prevail—

1 “(i) a statement concerning the
2 amount of such potential damages; and

3 “(ii) a statement concerning the prob-
4 ability that the plaintiff would prevail on
5 the claims alleged under this title and a
6 brief explanation of the reasons for that
7 conclusion.

8 “(B) DISAGREEMENT ON AMOUNT OF
9 DAMAGES OR LIKELIHOOD OF PREVAILING.—If
10 the parties do not agree on the amount of dam-
11 ages per share that would be recoverable if the
12 plaintiff prevailed on each claim alleged under
13 this title or on the likelihood that the plaintiff
14 would prevail on those claims, or both, a state-
15 ment from each settling party concerning the
16 issue or issues on which the parties disagree.

17 “(C) INADMISSIBILITY FOR CERTAIN PUR-
18 POSES.—Statements made in accordance with
19 subparagraphs (A) and (B) shall not be admis-
20 sible for purposes of any Federal or State judi-
21 cial or administrative proceeding.

22 “(2) STATEMENT OF ATTORNEYS’ FEES OR
23 COSTS SOUGHT.—If any of the settling parties or
24 their counsel intend to apply to the court for an
25 award of attorneys’ fees or costs from any fund es-

1 tablished as part of the settlement, a statement indi-
2 cating which parties or counsel intend to make such
3 an application, the amount of fees and costs that
4 will be sought, and a brief explanation of the basis
5 for the application.

6 “(3) IDENTIFICATION OF REPRESENTATIVES.—
7 The name, telephone number, and address of one or
8 more representatives of counsel for the plaintiff class
9 who will be reasonably available to answer questions
10 from class members concerning any matter con-
11 tained in any notice of settlement published or oth-
12 erwise disseminated to class members.

13 “(4) OTHER INFORMATION.—Such other infor-
14 mation as may be required by the court, or by any
15 guardian ad litem or plaintiff steering committee ap-
16 pointed by the court pursuant to section 38.

17 “(n) SPECIAL VERDICTS.—In an implied private ac-
18 tion arising under this title in which the plaintiff may re-
19 cover money damages only on proof that a defendant acted
20 with a particular state of mind, the court shall, when re-
21 quested by a defendant, submit to the jury a written inter-
22 rogatory on the issue of each such defendant’s state of
23 mind at the time the alleged violation occurred.

24 “(o) NAMED PLAINTIFF THRESHOLD.—In an im-
25 plied private action arising under this title, in order for

1 a plaintiff or plaintiffs to obtain certification as represent-
 2 atives of a class of investors pursuant to the Federal Rules
 3 of Civil Procedure, the plaintiff or plaintiffs must show
 4 that they owned, in the aggregate, during the time period
 5 in which violations of this title are alleged to have oc-
 6 curred, not less than the lesser of—

7 “(1) 1 percent of the securities which are the
 8 subject of the litigation; or

9 “(2) \$10,000 (in market value) of such securi-
 10 ties.”.

11 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
 12 **DURE; TIME LIMITATION ON PRIVATE**
 13 **RIGHTS OF ACTION.**

14 (a) RECOVERY OF COSTS AND ATTORNEYS’ FEES.—
 15 The Securities Exchange Act of 1934 (15 U.S.C. 78a et
 16 seq.) is amended by adding at the end the following new
 17 section:

18 **“SEC. 36. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
 19 **DURE.**

20 “(a) IN GENERAL.—

21 “(1) OFFER TO PROCEED.—Except as provided
 22 in paragraph (2), in an implied private action aris-
 23 ing under this title, any party may, before the expi-
 24 ration of the period permitted for answering the
 25 complaint, deliver to all other parties an offer to

1 proceed pursuant to any voluntary, nonbinding alter-
2 native dispute resolution procedure established or
3 recognized under the rules of the court in which the
4 action is maintained.

5 “(2) PLAINTIFF CLASS ACTIONS.—In an im-
6 plied private action under this title which is brought
7 as a plaintiff class action, an offer under paragraph
8 (1) shall be made not later than 30 days after a
9 guardian ad litem or plaintiff steering committee is
10 appointed by the court in accordance with section
11 38.

12 “(3) RESPONSE.—The recipient of an offer
13 under paragraph (1) or (2) shall file a written notice
14 of acceptance or rejection of the offer with the court
15 not later than 10 days after receipt of the offer. The
16 court may, upon motion by any party made prior to
17 the expiration of such period, extend the period for
18 not more than 90 additional days, during which time
19 discovery may be permitted by the court.

20 “(4) SELECTION OF TYPE OF ALTERNATIVE
21 DISPUTE RESOLUTION.—For purposes of paragraphs
22 (1) and (2), if the rules of the court establish or rec-
23 ognize more than 1 type of alternative dispute reso-
24 lution, the parties may stipulate as to the type of al-
25 ternative dispute resolution to be applied. If the par-

1 ties are unable to so stipulate, the court shall issue
2 an order not later than 20 days after the date on
3 which the parties agree to the use of alternative dis-
4 pute resolution, specifying the type of alternative
5 dispute resolution to be applied.

6 “(5) SANCTIONS FOR DILATORY OR OBSTRUC-
7 TIVE CONDUCT.—If the court finds that a party has
8 engaged in dilatory or obstructive conduct in taking
9 or opposing any discovery allowed during the re-
10 sponse period described in paragraph (3), the court
11 may—

12 “(A) extend the period to permit further
13 discovery from that party for a suitable period;
14 and

15 “(B) deny that party the opportunity to
16 conduct further discovery prior to the expiration
17 of the period.

18 “(b) PENALTY FOR UNREASONABLE LITIGATION PO-
19 SITION.—

20 “(1) AWARD OF COSTS.—In an implied private
21 action arising under this title, upon motion of the
22 prevailing party made prior to final judgment, the
23 court shall award costs, including reasonable attor-
24 neys’ fees, against a party or parties or their attor-
25 neys, if—

1 “(A) the party unreasonably refuses to
2 proceed pursuant to an alternative dispute reso-
3 lution procedure, or refuses to accept the result
4 of an alternative dispute resolution procedure;

5 “(B) final judgment is entered against the
6 party; and

7 “(C) the party asserted a claim or defense
8 in the action which was not substantially justi-
9 fied.

10 “(2) DETERMINATION OF JUSTIFICATION.—For
11 purposes of paragraph (1)(C), whether a position is
12 ‘substantially justified’ shall be determined in the
13 same manner as under section 2412(d)(1)(B) of title
14 28, United States Code.

15 “(3) LIMITED USE.—Fees and costs awarded
16 under this paragraph shall not be applied to any
17 named plaintiff in any action certified as a class ac-
18 tion under the Federal Rules of Civil Procedure if
19 such plaintiff has never owned more than
20 \$1,000,000 of the securities which are the subject of
21 the litigation.”.

22 (b) LIMITATIONS PERIOD FOR IMPLIED PRIVATE
23 RIGHTS OF ACTION.—The Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.) is amended by adding at
25 the end the following new section:

1 **“SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE**
2 **RIGHTS OF ACTION.**

3 “(a) IN GENERAL.—Except as otherwise provided in
4 this title, an implied private right of action arising under
5 this title shall be brought not later than the earlier of—

6 “(1) 5 years after the date on which the alleged
7 violation occurred; or

8 “(2) 2 years after the date on which the alleged
9 violation was discovered or should have been discov-
10 ered through the exercise of reasonable diligence.

11 “(b) EFFECTIVE DATE.—The limitations period pro-
12 vided by this section shall apply to all proceedings pending
13 on or commenced after the date of enactment of this sec-
14 tion.”.

15 **SEC. 103. PLAINTIFF STEERING COMMITTEES.**

16 The Securities Exchange Act of 1934 (15 U.S.C. 78a
17 et seq.) is amended by adding at the end the following
18 new section:

19 **“SEC. 38. GUARDIAN AD LITEM AND CLASS ACTION STEER-**
20 **ING COMMITTEES.**

21 “(a) GUARDIAN AD LITEM.—Except as provided in
22 subsection (b), not later than 10 days after certifying a
23 plaintiff class in an implied private action brought under
24 this title, the court shall appoint a guardian ad litem for
25 the plaintiff class from a list or lists provided by the par-
26 ties or their counsel. The guardian ad litem shall direct

1 counsel for the class and perform such other functions as
 2 the court may specify. The court shall apportion the rea-
 3 sonable fees and expenses of the guardian ad litem among
 4 the parties. Court appointment of a guardian ad litem
 5 shall not be subject to interlocutory review.

6 “(b) CLASS ACTION STEERING COMMITTEE.—Sub-
 7 section (a) shall not apply if, not later than 10 days after
 8 certifying a plaintiff class, on its own motion or on motion
 9 of a member of the class, the court appoints a committee
 10 of class members to direct counsel for the class (hereafter
 11 in this section referred to as the ‘plaintiff steering commit-
 12 tee’) and to perform such other functions as the court may
 13 specify. Court appointment of a plaintiff steering commit-
 14 tee shall not be subject to interlocutory review.

15 “(c) MEMBERSHIP OF PLAINTIFF STEERING COM-
 16 MITTEE.—

17 “(1) QUALIFICATIONS.—

18 “(A) NUMBER.—A plaintiff steering com-
 19 mittee shall consist of not less than 5 class
 20 members, willing to serve, who the court be-
 21 lieves will fairly represent the class.

22 “(B) OWNERSHIP INTERESTS.—Members
 23 of the plaintiff steering committee shall have
 24 cumulatively held during the class period not
 25 less than—

1 “(i) the lesser of 5 percent of the se-
2 curities which are the subject matter of the
3 litigation or securities which are the sub-
4 ject matter of the litigation with a market
5 value of \$10,000,000; or

6 “(ii) such smaller percentage or dollar
7 amount as the court finds appropriate
8 under the circumstances.

9 “(2) NAMED PLAINTIFFS.—Class members who
10 are named plaintiffs in the litigation may serve on
11 the plaintiff steering committee, but shall not com-
12 prise a majority of the committee.

13 “(3) NONCOMPENSATION OF MEMBERS.—Mem-
14 bers of the plaintiff steering committee shall serve
15 without compensation, except that any member may
16 apply to the court for reimbursement of reasonable
17 out-of-pocket expenses from any common fund es-
18 tablished for the class.

19 “(4) MEETINGS.—The plaintiff steering com-
20 mittee shall conduct its business at one or more pre-
21 viously scheduled meetings of the committee at
22 which a majority of its members are present in per-
23 son or by electronic communication. The plaintiff
24 steering committee shall decide all matters within its
25 authority by a majority vote of all members, except

1 that the committee may determine that decisions
2 other than to accept or reject a settlement offer or
3 to employ or dismiss counsel for the class may be
4 delegated to one or more members of the committee,
5 or may be voted upon by committee members serially,
6 without a meeting.

7 “(5) RIGHT OF NONMEMBERS TO BE HEARD.—
8 A class member who is not a member of the plaintiff
9 steering committee may appear and be heard by the
10 court on any issue in the action, to the same extent
11 as any other party.

12 “(d) FUNCTIONS OF GUARDIAN AD LITEM AND
13 PLAINTIFF STEERING COMMITTEE.—

14 “(1) DIRECT COUNSEL.—The authority of the
15 guardian ad litem or the plaintiff steering committee
16 to direct counsel for the class shall include all powers
17 normally permitted to an attorney’s client in litigation,
18 including the authority to retain or dismiss
19 counsel and to reject offers of settlement, and the
20 preliminary authority to accept an offer of settlement,
21 subject to the restrictions specified in paragraph (2). Dismissal of
22 counsel other than for cause shall not limit the ability of
23 counsel to enforce any contractual fee agreement or to apply to the
24 court

1 for a fee award from any common fund established
2 for the class.

3 “(2) SETTLEMENT OFFERS.—If a guardian ad
4 litem or a plaintiff steering committee gives prelimi-
5 nary approval to an offer of settlement, the guardian
6 ad litem or the plaintiff steering committee may seek
7 approval of the offer by a majority of class members
8 if the committee determines that the benefit of seek-
9 ing such approval outweighs the cost of soliciting the
10 approval of class members.

11 “(e) IMMUNITY FROM LIABILITY; REMOVAL.—Any
12 person serving as a guardian ad litem or as a member
13 of a plaintiff steering committee shall be immune from any
14 liability arising from such service. The court may remove
15 a guardian ad litem or a member of a plaintiff steering
16 committee for good cause shown.

17 “(f) EFFECT ON OTHER LAW.—This section does not
18 affect any other provision of law concerning class actions
19 or the authority of the court to give final approval to any
20 offer of settlement.”.

21 **SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD AC-**
22 **TIONS.**

23 The Securities Exchange Act of 1934 (15 U.S.C. 78a
24 et seq.) is amended by adding at the end the following
25 new section:

1 **“SEC. 39. REQUIREMENTS FOR SECURITIES FRAUD AC-**
2 **TIONS.**

3 “(a) INTENT.—In an implied private action arising
4 under this title in which the plaintiff may recover money
5 damages from a defendant only on proof that the defend-
6 ant acted with some level of intent, the plaintiff’s com-
7 plaint shall allege specific facts demonstrating the state
8 of mind of each defendant at the time the alleged violation
9 occurred.

10 “(b) MISLEADING STATEMENTS AND OMISSIONS.—
11 In an implied action arising under this title in which the
12 plaintiff alleges that the defendant—

13 “(1) made an untrue statement of a material
14 fact; or

15 “(2) omitted to state a material fact necessary
16 in order to make the statements made, in the light
17 of the circumstances in which they were made, not
18 misleading;

19 the plaintiff shall specify each statement alleged to have
20 been misleading, the reason or reasons why the statement
21 is misleading, and, if an allegation regarding the state-
22 ment or omission is made on information and belief, the
23 plaintiff shall set forth all information on which that belief
24 is formed.

25 “(c) BURDEN OF PROOF.—In an implied private ac-
26 tion arising under this title based on a material

1 misstatement or omission concerning a security, and in
2 which the plaintiff claims to have bought or sold the secu-
3 rity based on a reasonable belief that the market value
4 of the security reflected all publicly available information,
5 the plaintiff shall have the burden of proving that the
6 misstatement or omission caused any loss incurred by the
7 plaintiff.

8 “(d) DAMAGES.—In an implied private action arising
9 under this title based on a material misstatement or omis-
10 sion concerning a security, and in which the plaintiff
11 claims to have bought or sold the security based on a rea-
12 sonable belief that the market value of the security re-
13 flected all publicly available information, the plaintiff’s
14 damages shall not exceed the lesser of—

15 “(1) the difference between the price paid by
16 the plaintiff for the security and the market value of
17 the security immediately after dissemination to the
18 market of information which corrects the
19 misstatement or omission; and

20 “(2) the difference between the price paid by
21 the plaintiff for the security and the price at which
22 the plaintiff sold the security after dissemination of
23 information correcting the misstatement or omis-
24 sion.”.

1 **SEC. 105. AMENDMENT TO RACKETEER INFLUENCED AND**
2 **CORRUPT ORGANIZATIONS ACT.**

3 Section 1964(c) of title 18, United States Code, is
4 amended by inserting “, except that no person may bring
5 an action under this provision if the racketeering activity,
6 as defined in section 1961(1)(D), involves fraud in the sale
7 of securities” before the period.

8 **TITLE II—FINANCIAL**
9 **DISCLOSURE**

10 **SEC. 201. SAFE HARBOR FOR FORWARD-LOOKING STATE-**
11 **MENTS.**

12 (a) CONSIDERATION OF REGULATORY OR LEGISLA-
13 TIVE CHANGES.—In consultation with investors and issu-
14 ers of securities, the Securities and Exchange Commission
15 shall consider adopting or amending its rules and regula-
16 tions, or making legislative recommendations, concern-
17 ing—

18 (1) criteria that the Commission finds appro-
19 priate for the protection of investors by which for-
20 ward-looking statements concerning the future eco-
21 nomic performance of an issuer of securities reg-
22 istered under section 12 of the Securities Exchange
23 Act of 1934 will be deemed not to be in violation of
24 section 10(b) of that Act; and

25 (2) procedures by which courts shall timely dis-
26 miss claims against such issuers of securities based

1 on such forward-looking statements if such state-
2 ments are in accordance with any criteria under
3 paragraph (1).

4 (b) COMMISSION CONSIDERATIONS.—In developing
5 rules or legislative recommendations in accordance with
6 subsection (a), the Commission shall consider—

7 (1) appropriate limits to liability for forward-
8 looking statements;

9 (2) procedures for making a summary deter-
10 mination of the applicability of any Commission rule
11 for forward-looking statements early in a judicial
12 proceeding to limit protracted litigation and expan-
13 sive discovery;

14 (3) incorporating and reflecting the scienter re-
15 quirements applicable to implied private actions
16 under section 10(b); and

17 (4) providing clear guidance to issuers of secu-
18 rities and the judiciary.

19 (c) SECURITIES ACT AMENDMENT.—The Securities
20 and Exchange Act of 1934 (15 U.S.C. 78a et seq.), is
21 amended by adding at the end the following new section:

22 **“SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-**
23 **LOOKING STATEMENTS.**

24 “(a) IN GENERAL.—In any implied private action
25 arising under this title that alleges that a forward-looking

1 statement concerning the future economic performance of
2 an issuer registered under section 12 was materially false
3 or misleading, if a party making a motion in accordance
4 with subsection (b) requests a stay of discovery concerning
5 the claims or defenses of that party, the court shall grant
6 such a stay until it has ruled on any such motion.

7 “(b) SUMMARY JUDGMENT MOTIONS.—Subsection
8 (a) shall apply to any motion for summary judgment made
9 by a defendant asserting that the forward-looking state-
10 ment was within the coverage of any rule which the Com-
11 mission may have adopted concerning such predictive
12 statements, if such motion is made not less than 60 days
13 after the plaintiff commences discovery in the action.

14 “(c) DILATORY CONDUCT; DUPLICATIVE DISCOV-
15 ERY.—Notwithstanding subsection (a) or (b), the time
16 permitted for a plaintiff to conduct discovery under sub-
17 section (b) may be extended, or a stay of the proceedings
18 may be denied, if the court finds that—

19 “(1) the defendant making a motion described
20 in subsection (b) engaged in dilatory or obstructive
21 conduct in taking or opposing any discovery; or

22 “(2) a stay of discovery pending a ruling on a
23 motion under subsection (b) would be substantially
24 unfair to the plaintiff or other parties to the ac-
25 tion.”.

1 **SEC. 202. FRAUD DETECTION AND DISCLOSURE.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting im-
4 mediately after section 10 the following new section:

5 **“SEC. 10A. AUDIT REQUIREMENTS.**

6 “(a) IN GENERAL.—Each audit required pursuant to
7 this title of an issuer’s financial statements by an inde-
8 pendent public accountant shall include, in accordance
9 with generally accepted auditing standards, as may be
10 modified or supplemented from time to time by the Com-
11 mission—

12 “(1) procedures designed to provide reasonable
13 assurance of detecting illegal acts that would have a
14 direct and material effect on the determination of fi-
15 nancial statement amounts;

16 “(2) procedures designed to identify related
17 party transactions which are material to the finan-
18 cial statements or otherwise require disclosure there-
19 in; and

20 “(3) an evaluation of whether there is substan-
21 tial doubt about the issuer’s ability to continue as a
22 going concern during the ensuing fiscal year.

23 “(b) REQUIRED RESPONSE TO AUDIT DISCOV-
24 ERIES.—

25 “(1) INVESTIGATION AND REPORT TO MANAGE-
26 MENT.—If, in the course of conducting an audit pur-

1 suant to this title to which subsection (a) applies,
2 the independent public accountant detects or other-
3 wise becomes aware of information indicating that
4 an illegal act (whether or not perceived to have a
5 material effect on the issuer's financial statements)
6 has or may have occurred, the accountant shall, in
7 accordance with generally accepted auditing stand-
8 ards, as may be modified or supplemented from time
9 to time by the Commission—

10 “(A)(i) determine whether it is likely that
11 an illegal act has occurred; and

12 “(ii) if so, determine and consider the pos-
13 sible effect of the illegal act on the financial
14 statements of the issuer, including any contin-
15 gent monetary effects, such as fines, penalties,
16 and damages; and

17 “(B) as soon as practicable, inform the ap-
18 propriate level of the issuer's management and
19 assure that the issuer's audit committee, or the
20 issuer's board of directors in the absence of
21 such a committee, is adequately informed with
22 respect to illegal acts that have been detected or
23 have otherwise come to the attention of such
24 accountant in the course of the audit, unless
25 the illegal act is clearly inconsequential.

1 “(2) RESPONSE TO FAILURE TO TAKE REME-
2 DIAL ACTION.—If, having first assured itself that
3 the audit committee of the board of directors of the
4 issuer or the board (in the absence of an audit com-
5 mittee) is adequately informed with respect to illegal
6 acts that have been detected or have otherwise come
7 to the accountant’s attention in the course of such
8 accountant’s audit, the independent public account-
9 ant concludes that—

10 “(A) the illegal act has a material effect on
11 the financial statements of the issuer;

12 “(B) the senior management has not
13 taken, and the board of directors has not
14 caused senior management to take, timely and
15 appropriate remedial actions with respect to the
16 illegal act; and

17 “(C) the failure to take remedial action is
18 reasonably expected to warrant departure from
19 a standard auditor’s report, when made, or
20 warrant resignation from the audit engagement;
21 the independent public accountant shall, as soon as
22 practicable, directly report its conclusions to the
23 board of directors.

24 “(3) NOTICE TO COMMISSION; RESPONSE TO
25 FAILURE TO NOTIFY.—An issuer whose board of di-

1 rectors receives a report under paragraph (2) shall
2 inform the Commission by notice not later than 1
3 business day after the receipt of such report and
4 shall furnish the independent public accountant
5 making such report with a copy of the notice fur-
6 nished to the Commission. If the independent public
7 accountant fails to receive a copy of the notice be-
8 fore the expiration of the required 1-business-day pe-
9 riod, the independent public accountant shall—

10 “(A) resign from the engagement; or

11 “(B) furnish to the Commission a copy of
12 its report (or the documentation of any oral re-
13 port given) not later than 1 business day follow-
14 ing such failure to receive notice.

15 “(4) REPORT AFTER RESIGNATION.—If an
16 independent public accountant resigns from an en-
17 gagement under paragraph (3)(A), the accountant
18 shall, not later than 1 business day following the
19 failure by the issuer to notify the Commission under
20 paragraph (3), furnish to the Commission a copy of
21 the accountant’s report (or the documentation of
22 any oral report given).

23 “(c) AUDITOR LIABILITY LIMITATION.—No inde-
24 pendent public accountant shall be liable in a private ac-
25 tion for any finding, conclusion, or statement expressed

1 in a report made pursuant to paragraph (3) or (4) of sub-
2 section (b), including any rules promulgated pursuant
3 thereto.

4 “(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-
5 CEEDINGS.—If the Commission finds, after notice and op-
6 portunity for hearing in a proceeding instituted pursuant
7 to section 21C, that an independent public accountant has
8 willfully violated paragraph (3) or (4) of subsection (b),
9 the Commission may, in addition to entering an order
10 under section 21C, impose a civil penalty against the inde-
11 pendent public accountant and any other person that the
12 Commission finds was a cause of such violation. The deter-
13 mination to impose a civil penalty and the amount of the
14 penalty shall be governed by the standards set forth in
15 section 21B.

16 “(e) PRESERVATION OF EXISTING AUTHORITY.—Ex-
17 cept as provided in subsection (d), nothing in this section
18 shall be held to limit or otherwise affect the authority of
19 the Commission under this title.

20 “(f) DEFINITION.—As used in this section, the term
21 ‘illegal act’ means an act or omission that violates any law,
22 or any rule or regulation having the force of law.”.

23 (b) EFFECTIVE DATES.—With respect to any reg-
24 istrant that is required to file selected quarterly financial
25 data pursuant to item 302(a) of Regulation S-K of the

1 Securities and Exchange Commission (17 CFR
 2 229.302(a)), the amendments made by subsection (a) shall
 3 apply to any annual report for any period beginning on
 4 or after January 1, 1994. With respect to any other reg-
 5 istrant, the amendment shall apply for any period begin-
 6 ning on or after January 1, 1995.

7 **SEC. 203. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
 8 **ERAL LIABILITY.**

9 (a) SECURITIES ACT AMENDMENT.—The Securities
 10 and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
 11 amended by adding at the end the following new section:

12 **“SEC. 41. PROPORTIONATE LIABILITY AND JOINT AND SEV-**
 13 **ERAL LIABILITY IN IMPLIED ACTIONS.**

14 “(a) APPLICABILITY.—This section shall apply only
 15 to the allocation of damages among persons who are, or
 16 who may become, liable for damages in an implied private
 17 action arising under this title. Nothing in this section shall
 18 affect the standards for liability associated with an implied
 19 private action arising under this title.

20 “(b) APPLICATION OF JOINT AND SEVERAL LIABIL-
 21 ITY.—

22 “(1) IN GENERAL.—A person against whom a
 23 judgment is entered in an implied private action
 24 arising under this title shall be liable jointly and sev-

1 erally for any recoverable damages on such judg-
2 ment if the person is found to have—

3 “(A) been a primary wrongdoer;

4 “(B) committed knowing securities fraud;

5 or

6 “(C) controlled any primary wrongdoer or
7 person who committed knowing securities fraud.

8 “(2) PRIMARY WRONGDOER.—As used in this
9 subsection—

10 “(A) the term ‘primary wrongdoer’
11 means—

12 “(i) any—

13 “(I) issuer, registrant, purchaser,
14 seller, or underwriter of securities;

15 “(II) marketmaker or specialist
16 in securities; or

17 “(III) clearing agency, securities
18 information processor, or government
19 securities dealer;

20 if such person breached a direct statutory
21 or regulatory obligation or if such person
22 otherwise had a principal role in the con-
23 duct that is the basis for the implied right
24 of action; or

1 “(ii) any person who intentionally ren-
2 dered substantial assistance to the fraudu-
3 lent conduct of any person described in
4 clause (i), with actual knowledge of such
5 person’s fraudulent conduct or fraudulent
6 purpose, and with knowledge that such
7 conduct was wrongful; and

8 “(B) a defendant engages in ‘knowing se-
9 curities fraud’ if such defendant—

10 “(i) makes a material representation
11 with actual knowledge that the representa-
12 tion is false, or omits to make a statement
13 with actual knowledge that, as a result of
14 the omission, one of the defendant’s mate-
15 rial representations is false and knows that
16 other persons are likely to rely on that
17 misrepresentation or omission, except that
18 reckless conduct by the defendant shall not
19 be construed to constitute ‘knowing securi-
20 ties fraud’; or

21 “(ii) intentionally rendered substantial
22 assistance to the fraudulent conduct of any
23 person described in clause (i), with actual
24 knowledge of such person’s fraudulent con-

1 duct or fraudulent purpose, and with
2 knowledge that such conduct was wrongful.

3 “(c) DETERMINATION OF RESPONSIBILITY.—In an
4 implied private action in which more than 1 person con-
5 tributed to a violation of this title, the court shall instruct
6 the jury to answer special interrogatories, or if there is
7 no jury, shall make findings, concerning the degree of re-
8 sponsibility of each person alleged to have caused or con-
9 tributed to the violation of this title, including persons who
10 have entered into settlements with the plaintiff. The inter-
11 rogatories or findings shall specify the amount of damages
12 the plaintiff is entitled to recover and the degree of respon-
13 sibility, measured as a percentage of the total fault of all
14 persons involved in the violation, of each person found to
15 have caused or contributed to the damages incurred by
16 the plaintiff or plaintiffs. In determining the degree of re-
17 sponsibility, the trier of fact shall consider—

18 “(1) the nature of the conduct of each person;
19 and

20 “(2) the nature and extent of the causal rela-
21 tionship between that conduct and the damage
22 claimed by the plaintiff.

23 “(d) APPLICATION OF PROPORTIONATE LIABILITY.—
24 Except as provided in subsection (b), the amount of liabil-
25 ity of a person who is, or may through right of contribu-

1 tion become, liable for damages based on an implied pri-
2 vate action arising under this title shall be determined as
3 follows:

4 “(1) DEGREE OF RESPONSIBILITY.—Except as
5 provided in paragraph (2), each liable party shall
6 only be liable for the portion of the judgment that
7 corresponds to that party’s degree of responsibility,
8 as determined under subsection (c).

9 “(2) UNCOLLECTIBLE SHARES.—If, upon mo-
10 tion made not later than 6 months after a final
11 judgment is entered, the court determines that all or
12 part of a defendant’s share of the obligation is
13 uncollectible—

14 “(A) the remaining defendants shall be
15 jointly and severally liable for the uncollectible
16 share if the plaintiff establishes that—

17 “(i) the plaintiff is an individual
18 whose recoverable damages under a final
19 judgment are equal to more than 10 per-
20 cent of the plaintiff’s net financial worth;
21 and

22 “(ii) the plaintiff’s net financial worth
23 is less than \$200,000; and

1 “(B) the amount paid by each of the re-
2 maining defendants to all other plaintiffs shall
3 be, in total, not more than the greater of—

4 “(i) that remaining defendant’s per-
5 centage of fault for the uncollectible share;
6 or

7 “(ii) 5 times—

8 “(I) the amount which the de-
9 fendant gained from the conduct that
10 gave rise to its liability; or

11 “(II) if a defendant did not ob-
12 tain a direct financial gain from the
13 conduct that gave rise to the liability
14 and the conduct consisted of the pro-
15 vision of deficient services to an entity
16 involved in the violation, the defend-
17 ant’s gross revenues received for the
18 provision of all services to the other
19 entity involved in the violation during
20 the calendar years in which deficient
21 services were provided.

22 “(3) OVERALL LIMIT.—In no event shall the
23 total payments required pursuant to paragraph (2)
24 exceed the amount of the uncollectible share.

1 “(4) DEFENDANTS SUBJECT TO CONTRIBU-
2 TION.—A defendant whose liability is reallocated
3 pursuant to paragraph (2) shall be subject to con-
4 tribution and to any continuing liability to the plain-
5 tiff on the judgment.

6 “(5) RIGHT OF CONTRIBUTION.—To the extent
7 that a defendant is required to make an additional
8 payment pursuant to paragraph (2), that defendant
9 may recover contribution—

10 “(A) from the defendant originally liable to
11 make the payment;

12 “(B) from any defendant liable jointly and
13 severally pursuant to subsection (b)(1);

14 “(C) from any defendant held proportion-
15 ately liable pursuant to this subsection who is
16 liable to make the same payment and has paid
17 less than his or her proportionate share of that
18 payment; or

19 “(D) from any other person responsible for
20 the conduct giving rise to the payment who
21 would have been liable to make the same pay-
22 ment.

23 “(e) NONDISCLOSURE TO JURY.—The standard for
24 allocation of damages under subsections (b)(1) and (c)
25 and the procedure for reallocation of uncollectible shares

1 under subsection (d)(2) shall not be disclosed to members
2 of the jury.

3 “(f) SETTLEMENT DISCHARGE.—

4 “(1) IN GENERAL.—A defendant who settles an
5 implied private action brought under this title at any
6 time before verdict or judgment shall be discharged
7 from all claims for contribution brought by other
8 persons. Upon entry of the settlement by the court,
9 the court shall enter a bar order constituting the
10 final discharge of all obligations to the plaintiff of
11 the settling defendant arising out of the action. The
12 order shall bar all future claims for contribution or
13 indemnity arising out of the action—

14 “(A) by nonsettling persons against the
15 settling defendant; and

16 “(B) by the settling defendant against any
17 nonsettling defendants.

18 “(2) REDUCTION.—If a person enters into a
19 settlement with the plaintiff prior to verdict or judg-
20 ment, the verdict or judgment shall be reduced by
21 the greater of—

22 “(A) an amount that corresponds to the
23 degree of responsibility of that person; or

24 “(B) the amount paid to the plaintiff by
25 that person.

1 “(g) CONTRIBUTION.—A person who becomes liable
2 for damages in an implied private action arising under this
3 title may recover contribution from any other person who,
4 if joined in the original suit, would have been liable for
5 the same damages. A claim for contribution shall be deter-
6 mined based on the degree of responsibility of the claimant
7 and of each person against whom a claim for contribution
8 is made.

9 “(h) STATUTE OF LIMITATIONS FOR CONTRIBU-
10 TION.—Once judgment has been entered in an implied pri-
11 vate action arising under this title determining liability,
12 an action for contribution must be brought not later than
13 6 months after the entry of a final, nonappealable judg-
14 ment in the action, except that an action for contribution
15 brought by a defendant who was required to make an ad-
16 ditional payment pursuant to subsection (d)(2) may be
17 brought not later than 6 months after the date on which
18 such payment was made.”.

19 (b) EFFECTIVE DATE.—Section 41 of the Securities
20 Exchange Act of 1934, as added by subsection (a), shall
21 only apply to implied private actions commenced after the
22 date of enactment of this Act.

1 **SEC. 204. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.**

2 The Securities Exchange Act of 1934 (15 U.S.C. 78a
3 et seq.) is amended by inserting immediately after section
4 13 the following new section:

5 **“SEC. 13A. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.**

6 “(a) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 “(1) PUBLIC ACCOUNTING FIRM.—The term
9 ‘public accounting firm’ means a sole proprietorship,
10 unincorporated association, partnership, corporation,
11 or other legal entity that is engaged in the practice
12 of public accounting.

13 “(2) BOARD.—The term ‘Board’ means the
14 Public Auditing Self-Disciplinary Board designated
15 by the Commission pursuant to subsection (b).

16 “(3) ACCOUNTANT’S REPORT.—The term ‘ac-
17 countant’s report’ means a document in which a
18 public accounting firm identifies a financial state-
19 ment, report, or other document and sets forth the
20 firm’s opinion regarding such financial statement,
21 report, or other document, or an assertion that an
22 opinion cannot be expressed.

23 “(4) PERSON ASSOCIATED WITH A PUBLIC AC-
24 COUNTING FIRM.—The term ‘person associated with
25 a public accounting firm’ means a natural person
26 who—

1 “(A) is a partner, shareholder, employee,
2 or individual proprietor of a public accounting
3 firm, or who shares in the profits of a public
4 accounting firm; and

5 “(B) engages in any conduct or practice in
6 connection with the preparation of an account-
7 ant’s report on any financial statement, report,
8 or other document required to be filed with the
9 Commission under any securities law.

10 “(5) PROFESSIONAL STANDARDS.—The term
11 ‘professional standards’ means generally accepted
12 auditing standards, generally accepted accounting
13 principles, generally accepted standards for attesta-
14 tion engagements, and any other standards related
15 to the preparation of financial statements or ac-
16 countant’s reports promulgated by the Commission
17 or a standard-setting body recognized by the Board.

18 “(b) ESTABLISHMENT OF BOARD.—

19 “(1) IN GENERAL.—Not later than 90 days
20 after the date of enactment of this section, the Com-
21 mission shall establish a Public Auditing Self-Dis-
22 ciplinary Board to perform the duties set forth in
23 this section. The Commission shall designate an en-
24 tity to serve as the Board if the Commission finds
25 that—

1 “(A) such entity is sponsored by an exist-
 2 ing national organization of certified public ac-
 3 countants that—

4 “(i) is most representative of certified
 5 public accountants covered by this title;
 6 and

7 “(ii) has demonstrated its commit-
 8 ment to improving the quality of practice
 9 before the Commission; and

10 “(B) control over such entity is vested in
 11 the members of the Board selected pursuant to
 12 subsection (c).

13 “(2) ALTERNATIVE ELECTION OF MEMBERS.—
 14 If the Commission designates an entity to serve as
 15 the Board pursuant to paragraph (1), the entity
 16 shall conduct the election of initial Board members
 17 in accordance with subsection (c)(1)(B)(i).

18 “(c) MEMBERSHIP OF BOARD.—

19 “(1) IN GENERAL.—The Board shall be com-
 20 posed of 3 appointed members and 4 elected mem-
 21 bers, as follows:

22 “(A) APPOINTED MEMBERS.—Three mem-
 23 bers of the Board shall be appointed in accord-
 24 ance with the following:

1 “(i) INITIAL APPOINTMENTS.—The
2 Chairman of the Commission shall make
3 the initial appointments, in consultation
4 with the other members of the Commis-
5 sion, not later than 90 days after the date
6 of enactment of this section.

7 “(ii) SUBSEQUENT APPOINTMENTS.—
8 After the initial appointments under clause
9 (i), members of the Board appointed to fill
10 vacancies of appointed members of the
11 Board shall be appointed in accordance
12 with the rules adopted pursuant to para-
13 graph (5). Such rules shall provide that
14 such members shall be appointed by the
15 Board, subject to the approval of the Com-
16 mission.

17 “(B) ELECTED MEMBERS.—Four mem-
18 bers, including the member who shall serve as
19 the chairperson of the Board, shall be elected in
20 accordance with the following:

21 “(i) INITIAL ELECTION.—Not later
22 than 120 days after the date on which the
23 Chairman of the Commission makes ap-
24 pointments under subparagraph (A)(i), an
25 entity designated by the Commission pur-

1 suant to subsection (b) shall conduct an
2 election of 4 initial elected members pursu-
3 ant to interim election rules proposed by
4 the entity and approved by the 3 interim
5 members of the Board and the Commis-
6 sion. If the Commission is unable to des-
7 ignate an entity meeting the criteria set
8 forth in subsection (b)(1), the members of
9 the Board appointed under subparagraph
10 (A)(i) shall adopt interim rules, subject to
11 approval by the Commission, providing for
12 the election of the 4 initial elected mem-
13 bers. Such rules shall provide that such
14 members of the Board shall be elected—

15 “(I) not later than 120 days
16 after the date on which members are
17 initially appointed under subpara-
18 graph (A)(i);

19 “(II) by persons who are associ-
20 ated with public accounting firms and
21 who are certified public accountants
22 under the laws of any State; and

23 “(III) subject to the approval of
24 the Commission.

1 “(ii) SUBSEQUENT ELECTIONS.—

2 After the initial elections under clause (i),
3 members of the Board elected to fill vacan-
4 cies of elected members of the Board shall
5 be elected in accordance with the rules
6 adopted pursuant to paragraph (5). Such
7 rules shall provide that such members of
8 the Board shall be elected—

9 “(I) by persons who are associ-
10 ated with public accounting firms and
11 who are certified public accountants
12 under the laws of any State; and

13 “(II) subject to the approval of
14 the Commission.

15 “(2) QUALIFICATION.—Four members of the
16 Board, including the chairperson of the Board, shall
17 be persons who have not been associated with a pub-
18 lic accounting firm during the 10-year period preced-
19 ing appointment or election to the Board under
20 paragraph (1). Three members of the Board who are
21 elected shall be persons associated with a public ac-
22 counting firm registered with the Board.

23 “(3) FULL-TIME BASIS.—The chairperson of
24 the Board shall serve on a full-time basis, severing

1 all business ties with his or her former firms or em-
2 ployers prior to beginning service on the Board.

3 “(4) TERMS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), each member of the Board
6 shall hold office for a term of 4 years or until
7 a successor is appointed, whichever is later, ex-
8 cept that any member appointed to fill a va-
9 cancy occurring prior to the expiration of the
10 term for which such member’s predecessor was
11 appointed shall be appointed for the remainder
12 of such term.

13 “(B) INITIAL BOARD MEMBERS.—Begin-
14 ning on the date on which all members of the
15 Board have been selected in accordance with
16 this subsection, the terms of office of the initial
17 Board members shall expire, as determined by
18 the Board, by lottery—

19 “(i) for 1 member, 1 year after such
20 date;

21 “(ii) for 2 members, 2 years after
22 such date;

23 “(iii) for 2 members, 3 years after
24 such date; and

1 “(iv) for 2 members, 4 years after
2 such date.

3 “(5) RULES.—Following selection of the 7 ini-
4 tial members of the Board in accordance with sub-
5 paragraphs (A)(i) and (B)(i) of paragraph (1), the
6 Board shall propose and adopt rules, which shall
7 provide for—

8 “(A) the operation and administration of
9 the Board, including—

10 “(i) the appointment of members in
11 accordance with paragraph (1)(A)(ii);

12 “(ii) the election of members in ac-
13 cordance with paragraph (1)(B)(ii); and

14 “(iii) the compensation of the mem-
15 bers of the Board;

16 “(B) the appointment and compensation of
17 such employees, attorneys, and consultants as
18 may be necessary or appropriate to carry out
19 the Board’s functions under this title;

20 “(C) the registration of public accounting
21 firms with the Board pursuant to subsections
22 (d) and (e); and

23 “(D) the matters described in subsections
24 (f) and (g).

1 “(d) REGISTRATION AND ANNUAL FEES.—After the
2 date on which all initial members of the Board have been
3 selected in accordance with subsection (c), the Board shall
4 assess and collect a registration fee and annual dues from
5 each public accounting firm registered with the Board.
6 Such fees and dues shall be assessed at a level sufficient
7 to recover the costs and expenses of the Board and to per-
8 mit the Board to operate on a self-financing basis. The
9 amount of fees and dues for each public accounting firm
10 shall be based upon—

11 “(1) the annual revenues of such firm from ac-
12 counting and auditing services;

13 “(2) the number of persons associated with the
14 public accounting firm;

15 “(3) the number of clients for which such firm
16 furnishes accountant’s reports on financial state-
17 ments, reports, or other documents filed with the
18 Commission; and

19 “(4) such other criteria as the Board may es-
20 tablish.

21 “(e) REGISTRATION WITH BOARD.—

22 “(1) REGISTRATION REQUIRED.—Beginning 1
23 year after the date on which all initial members of
24 the Board have been selected in accordance with
25 subsection (c), it shall be unlawful for a public ac-

1 counting firm to furnish an accountant's report on
2 any financial statement, report, or other document
3 required to be filed with the Commission under any
4 Federal securities law, unless such firm is registered
5 with the Board.

6 “(2) APPLICATION FOR REGISTRATION.—A
7 public accounting firm may be registered under this
8 subsection by filing with the Board an application
9 for registration in such form and containing such in-
10 information as the Board, by rule, may prescribe.
11 Each application shall include—

12 “(A) the names of all clients of the public
13 accounting firm for which the firm furnishes ac-
14 countant's reports on financial statements, re-
15 ports, or other documents filed with the Com-
16 mission;

17 “(B) financial information of the public ac-
18 counting firm for its most recent fiscal year, in-
19 cluding its annual revenues from accounting
20 and auditing services, its assets and its liabil-
21 ities;

22 “(C) a statement of the public accounting
23 firm's policies and procedures with respect to
24 quality control of its accounting and auditing
25 practice;

1 “(D) information relating to criminal, civil,
2 or administrative actions or formal disciplinary
3 proceedings pending against such firm, or any
4 person associated with such firm, in connection
5 with an accountant’s report furnished by such
6 firm;

7 “(E) a list of persons associated with the
8 public accounting firm who are certified public
9 accountants, including any State professional li-
10 cense or certification number for each such per-
11 son; and

12 “(F) such other information that is reason-
13 ably related to the Board’s responsibilities as
14 the Board considers necessary or appropriate.

15 “(3) PERIODIC REPORTS.—Once in each year,
16 or more frequently as the Board, by rule, may pre-
17 scribe, each public accounting firm registered with
18 the Board shall submit reports to the Board updat-
19 ing the information contained in its application for
20 registration and containing such additional informa-
21 tion that is reasonably related to the Board’s re-
22 sponsibilities as the Board, by rule, may prescribe.

23 “(4) EXEMPTIONS.—The Commission, by rule
24 or order, upon its own motion or upon application,
25 may conditionally or unconditionally exempt any

1 public accounting firm or any accountant's report,
2 or any class of public accounting firms or any class
3 of accountant's reports, from any provisions of this
4 section or the rules or regulations issued hereunder,
5 if the Commission finds that such exemption is con-
6 sistent with the public interest, the protection of in-
7 vestors, and the purposes of this section.

8 “(5) CONFIDENTIALITY.—The Board may, by
9 rule, designate portions of the filings required pursu-
10 ant to paragraphs (2) and (3) as privileged and con-
11 fidential.

12 “(f) DUTIES OF BOARD.—After the date on which all
13 initial members of the Board have been selected in accord-
14 ance with subsection (c), the Board shall have the follow-
15 ing duties and powers:

16 “(1) INVESTIGATIONS AND DISCIPLINARY PRO-
17 CEEDINGS.—The Board shall establish fair proce-
18 dures for investigating and disciplining public ac-
19 counting firms registered with the Board, and per-
20 sons associated with such firms, for violations of the
21 Federal securities laws, the rules or regulations is-
22 sued thereunder, the rules adopted by the Board, or
23 professional standards in connection with the prepa-
24 ration of an accountant's report on a financial state-

1 ment, report, or other document filed with the Com-
2 mission.

3 “(2) INVESTIGATION PROCEDURES.—

4 “(A) IN GENERAL.—The Board may con-
5 duct an investigation of any act, practice, or
6 omission by a public accounting firm registered
7 with the Board, or by any person associated
8 with such firm, in connection with the prepara-
9 tion of an accountant’s report on a financial
10 statement, report, or other document filed with
11 the Commission that may violate any applicable
12 provision of the Federal securities laws, the
13 rules and regulations issued thereunder, the
14 rules adopted by the Board, or professional
15 standards, whether such act, practice, or omis-
16 sion is the subject of a criminal, civil, or admin-
17 istrative action, or a disciplinary proceeding, or
18 otherwise is brought to the attention of the
19 Board.

20 “(B) POWERS OF BOARD.—For purposes
21 of an investigation under this paragraph, the
22 Board may, in addition to such other actions as
23 the Board determines to be necessary or appro-
24 priate—

1 “(i) require the testimony of any per-
2 son associated with a public accounting
3 firm registered with the Board, with re-
4 spect to any matter which the Board con-
5 siders relevant or material to the investiga-
6 tion;

7 “(ii) require the production of audit
8 workpapers and any other document or in-
9 formation in the possession of a public ac-
10 counting firm registered with the Board, or
11 any person associated with such firm,
12 wherever domiciled, that the Board consid-
13 ers relevant or material to the investiga-
14 tion, and may examine the books and
15 records of such firm to verify the accuracy
16 of any documents or information so sup-
17 plied; and

18 “(iii) request the testimony of any
19 person and the production of any docu-
20 ment in the possession of any person, in-
21 cluding a client of a public accounting firm
22 registered with the Board, that the Board
23 considers relevant or material to the inves-
24 tigation.

1 “(C) SUSPENSION OR REVOCATION OF
2 REGISTRATION FOR NONCOMPLIANCE.—The re-
3 fusals of any person associated with a public ac-
4 counting firm registered with the Board to tes-
5 tify, or the refusal of any such person to
6 produce documents or otherwise cooperate with
7 the Board, in connection with an investigation
8 under this section, shall be cause for suspend-
9 ing or barring such person from associating
10 with a public accounting firm registered with
11 the Board, or such other appropriate sanction
12 as the Board shall determine. The refusal of
13 any public accounting firm registered with the
14 Board to produce documents or otherwise co-
15 operate with the Board, in connection with an
16 investigation under this section, shall be cause
17 for the suspension or revocation of the registra-
18 tion of such firm, or such other appropriate
19 sanction as the Board shall determine.

20 “(D) REFERRAL TO COMMISSION.—

21 “(i) IN GENERAL.—If the Board is
22 unable to conduct or complete an inves-
23 tigation under this section because of the
24 refusal of any client of a public accounting
25 firm registered with the Board, or any

1 other person, to testify, produce docu-
2 ments, or otherwise cooperate with the
3 Board in connection with such investiga-
4 tion, the Board shall report such refusal to
5 the Commission.

6 “(ii) INVESTIGATION.—The Commis-
7 sion may designate the Board or one or
8 more officers of the Board who shall be
9 empowered, in accordance with such proce-
10 dures as the Commission may adopt, to
11 subpoena witnesses, compel their attend-
12 ance, and require the production of any
13 books, papers, correspondence, memo-
14 randa, or other records relevant to any in-
15 vestigation by the Board. Attendance of
16 witnesses and the production of any
17 records may be required from any place in
18 the United States or any State at any des-
19 ignated place of hearing. Enforcement of a
20 subpoena issued by the Board, or an offi-
21 cer of the Board, pursuant to this subpara-
22 graph shall occur in the manner provided
23 for in section 21(c). Examination of wit-
24 nesses subpoenaed pursuant to this sub-
25 paragraph shall be conducted before an of-

1 ficer authorized to administer oaths by the
2 laws of the United States or of the place
3 where the examination is held.

4 “(iii) REFERRALS TO COMMISSION.—

5 The Board may refer any investigation to
6 the Commission, as the Board deems ap-
7 propriate.

8 “(E) IMMUNITY FROM CIVIL LIABILITY.—

9 An employee of the Board engaged in carrying
10 out an investigation or disciplinary proceeding
11 under this section shall be immune from any
12 civil liability arising out of such investigation or
13 disciplinary proceeding in the same manner and
14 to the same extent as an employee of the Fed-
15 eral Government in similar circumstances.

16 “(3) DISCIPLINARY PROCEDURES.—

17 “(A) DECISION TO DISCIPLINE.—In a pro-
18 ceeding by the Board to determine whether a
19 public accounting firm, or a person associated
20 with such firm, should be disciplined, the Board
21 shall bring specific charges, notify such firm or
22 person of the charges, give such firm or person
23 an opportunity to defend against such charges,
24 and keep a record of such actions.

1 “(B) SANCTIONS.—If the Board finds that
2 a public accounting firm, or a person associated
3 with such firm, has engaged in any act, prac-
4 tice, or omission in violation of the Federal se-
5 curities laws, the rules or regulations issued
6 thereunder, the rules adopted by the Board, or
7 professional standards, the Board may impose
8 such disciplinary sanctions as it deems appro-
9 priate, including—

10 “(i) revocation or suspension of reg-
11 istration under this section;

12 “(ii) limitation of activities, functions,
13 and operations;

14 “(iii) fine;

15 “(iv) censure;

16 “(v) in the case of a person associated
17 with a public accounting firm, suspension
18 or bar from being associated with a public
19 accounting firm registered with the Board;
20 and

21 “(vi) any other disciplinary sanction
22 that the Board determines to be appro-
23 priate.

24 “(C) STATEMENT REQUIRED.—A deter-
25 mination by the Board to impose a disciplinary

1 sanction shall be supported by a written state-
2 ment by the Board setting forth—

3 “(i) any act or practice in which the
4 public accounting firm or person associated
5 with such firm has been found to have en-
6 gaged, or which such firm or person has
7 been found to have omitted;

8 “(ii) the specific provision of the Fed-
9 eral securities laws, the rules or regula-
10 tions issued thereunder, the rules adopted
11 by the Board, or professional standards
12 which any such act, practice, or omission is
13 deemed to violate; and

14 “(iii) the sanction imposed and the
15 reasons therefor.

16 “(D) PROHIBITION ON ASSOCIATION.—It
17 shall be unlawful—

18 “(i) for any person as to whom a sus-
19 pension or bar is in effect willfully to be or
20 to become associated with a public ac-
21 counting firm registered with the Board, in
22 connection with the preparation of an ac-
23 countant’s report on any financial state-
24 ment, report, or other document filed with

1 the Commission, without the consent of the
2 Board or the Commission; and

3 “(ii) for any public accounting firm
4 registered with the Board to permit such a
5 person to become, or remain, associated
6 with such firm without the consent of the
7 Board or the Commission, if such firm
8 knew or, in the exercise of reasonable care
9 should have known, of such suspension or
10 bar.

11 “(4) REPORTING OF SANCTIONS.—If the Board
12 imposes a disciplinary sanction against a public ac-
13 counting firm, or a person associated with such firm,
14 the Board shall report such sanction to the Commis-
15 sion, to the appropriate State or foreign licensing
16 board or boards with which such firm or such person
17 is licensed or certified to practice public accounting,
18 and to the public. The information reported shall in-
19 clude—

20 “(A) the name of the public accounting
21 firm, or person associated with such firm,
22 against whom the sanction is imposed;

23 “(B) a description of the acts, practices, or
24 omissions upon which the sanction is based;

25 “(C) the nature of the sanction; and

1 “(D) such other information respecting the
2 circumstances of the disciplinary action (includ-
3 ing the name of any client of such firm affected
4 by such acts, practices, or omissions) as the
5 Board deems appropriate.

6 “(5) DISCOVERY AND ADMISSIBILITY OF BOARD
7 MATERIAL.—

8 “(A) DISCOVERABILITY.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in subparagraph (C), all reports,
11 memoranda, and other information pre-
12 pared, collected, or received by the Board,
13 and the deliberations and other proceed-
14 ings of the Board and its employees and
15 agents in connection with an investigation
16 or disciplinary proceeding under this sec-
17 tion shall not be subject to any form of
18 civil discovery, including demands for pro-
19 duction of documents and for testimony of
20 individuals, in connection with any pro-
21 ceeding in any State or Federal court, or
22 before any State or Federal administrative
23 agency. This subparagraph shall not apply
24 to any information provided to the Board
25 that would have been subject to discovery

1 from the person or entity that provided it
2 to the Board, but is no longer available
3 from that person or entity.

4 “(ii) EXEMPTION.—Submissions to
5 the Board by or on behalf of a public ac-
6 counting firm or person associated with
7 such a firm or on behalf of any other par-
8 ticipant in a Board proceeding, including
9 documents generated by the Board itself,
10 shall be exempt from discovery to the same
11 extent as the material described in clause
12 (i), whether in the possession of the Board
13 or any other person, if such submission—

14 “(I) is prepared specifically for
15 the purpose of the Board proceeding;
16 and

17 “(II) addresses the merits of the
18 issues under investigation by the
19 Board.

20 “(iii) CONSTRUCTION.—Nothing in
21 this subparagraph shall limit the authority
22 of the Board to provide appropriate public
23 access to disciplinary hearings of the
24 Board, or to reports or memoranda re-

1 ceived by the Board in connection with
2 such proceedings.

3 “(B) ADMISSIBILITY.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in subparagraph (C), all reports,
6 memoranda, and other information pre-
7 pared, collected, or received by the Board,
8 the deliberations and other proceedings of
9 the Board and its employees and agents in
10 connection with an investigation or discipli-
11 nary proceeding under this section, the
12 fact that an investigation or disciplinary
13 proceeding has been commenced, and the
14 Board’s determination with respect to any
15 investigation or disciplinary proceeding
16 shall be inadmissible in any proceeding in
17 any State or Federal court or before any
18 State or Federal administrative agency.

19 “(ii) TREATMENT OF CERTAIN DOCU-
20 MENTS.—Submissions to the Board by or
21 on behalf of a public accounting firm or
22 person associated with such a firm or on
23 behalf of any other participant in a Board
24 proceeding, including documents generated
25 by the Board itself, shall be inadmissible to

1 the same extent as the material described
2 in clause (i), if such submission—

3 “(I) is prepared specifically for
4 the purpose of the Board proceedings;
5 and

6 “(II) addresses the merits of the
7 issues under investigation by the
8 Board.

9 “(C) AVAILABILITY AND ADMISSIBILITY OF
10 INFORMATION.—

11 “(i) IN GENERAL.—All information
12 referred to in subparagraphs (A) and (B)
13 shall be—

14 “(I) available to the Commission
15 and to any other Federal department
16 or agency in connection with the exer-
17 cise of its regulatory authority to the
18 extent that such information would be
19 available to such agency from the
20 Commission as a result of a Commis-
21 sion enforcement investigation;

22 “(II) available to Federal and
23 State authorities in connection with
24 any criminal investigation or proceed-
25 ing;

1 “(III) admissible in any action
2 brought by the Commission or any
3 other Federal department or agency
4 pursuant to its regulatory authority,
5 to the extent that such information
6 would be available to such agency
7 from the Commission as a result of a
8 Commission enforcement investigation
9 and in any criminal action; and

10 “(IV) available to State licensing
11 boards to the extent authorized in
12 paragraph (6).

13 “(ii) OTHER LIMITATIONS.—Any doc-
14 uments or other information provided to
15 the Commission or other authorities pursu-
16 ant to clause (i) shall be subject to the lim-
17 itations on discovery and admissibility set
18 forth in subparagraphs (A) and (B).

19 “(D) TITLE 5 TREATMENT.—This sub-
20 section shall be considered to be a statute de-
21 scribed in section 552(b)(3)(B) of title 5,
22 United States Code, for purposes of that sec-
23 tion 552.

24 “(6) PARTICIPATION BY STATE LICENSING
25 BOARDS.—

1 “(A) NOTICE.—When the Board institutes
2 an investigation pursuant to paragraph (2)(A),
3 it shall notify the State licensing boards in the
4 States in which the public accounting firm or
5 person associated with such firm engaged in the
6 act or failure to act alleged to have violated
7 professional standards, of the pendency of the
8 investigation, and shall invite the State licens-
9 ing boards to participate in the investigation.

10 “(B) ACCEPTANCE BY STATE BOARD.—

11 “(i) PARTICIPATION.—If a State li-
12 censing board elects to join in the inves-
13 tigation, its representatives shall partici-
14 pate, pursuant to rules established by the
15 Board, in investigating the matter and in
16 presenting the evidence justifying the
17 charges in any hearing pursuant to para-
18 graph (3)(A).

19 “(ii) REVIEW.—In the event that the
20 State licensing board disagrees with the
21 Board’s determination with respect to the
22 matter under investigation, it may seek re-
23 view of that determination by the Commis-
24 sion pursuant to procedures that the Com-
25 mission shall specify by regulation.

1 “(C) PROHIBITION ON CONCURRENT IN-
2 VESTIGATIONS.—A State licensing board shall
3 not institute its own proceeding with respect to
4 a matter referred to in subparagraph (A) until
5 after the Board’s determination has become
6 final, including completion of all review by the
7 Commission and the courts.

8 “(D) STATE SANCTIONS PERMITTED.—If
9 the Board or the Commission imposes a sanc-
10 tion upon a public accounting firm or person
11 associated with such a firm, and that deter-
12 mination either is not subjected to judicial re-
13 view or is upheld on judicial review, a State li-
14 censing board may impose a sanction on the
15 basis of the Board’s report pursuant to para-
16 graph (4). Any sanction imposed by the State
17 licensing board under this clause shall be inad-
18 missible in any proceeding in any State or Fed-
19 eral court or before any State or Federal ad-
20 ministrative agency, except to the extent pro-
21 vided in paragraph (5)(D).

22 “(E) SANCTIONS NOT PERMITTED.—If a
23 sanction is not imposed on a public accounting
24 firm or person associated with such a firm,
25 and—

1 “(i) a State licensing board elected to
2 participate in an investigation referred to
3 in subparagraph (A), the State licensing
4 board may not impose a sanction with re-
5 spect to the matter; and

6 “(ii) a State licensing board elected
7 not to participate in an investigation re-
8 ferred to in subparagraph (A), subpara-
9 graphs (A) and (B) of paragraph (5) shall
10 apply with respect to any investigation or
11 proceeding subsequently instituted by the
12 State licensing board and, in particular,
13 the State licensing board shall not have ac-
14 cess to the record of the proceeding before
15 the Board and that record shall be inad-
16 missible in any proceeding before the State
17 licensing board.

18 “(g) ADDITIONAL DUTIES REGARDING QUALITY
19 CONTROL.—After the date on which all initial members
20 of the Board have been selected in accordance with sub-
21 section (c), the Board shall have the following duties and
22 powers in addition to those set forth in subsection (f):

23 “(1) IN GENERAL.—The Board shall seek to
24 promote a high level of professional conduct among
25 public accounting firms registered with the Board,

1 to improve the quality of audit services provided by
2 such firms, and, in general, to protect investors and
3 promote the public interest.

4 “(2) PROFESSIONAL PEER REVIEW ORGANIZA-
5 TIONS.—

6 “(A) MEMBERSHIP REQUIREMENT.—The
7 Board shall require each public accounting firm
8 subject to the disciplinary authority of the
9 Board to be a member of a professional peer re-
10 view organization certified by the Board pursu-
11 ant to subparagraph (B).

12 “(B) CRITERIA FOR CERTIFICATION.—The
13 Board shall, by rule, establish general criteria
14 for the certification of peer review organizations
15 and shall certify organizations that satisfy those
16 criteria, or such amended criteria as the Board
17 may adopt. To be certified, a peer review orga-
18 nization shall, at a minimum—

19 “(i) require a member public account-
20 ing firm to undergo peer review not less
21 than once every 3 years and publish the re-
22 sults of the peer review; and

23 “(ii) adopt standards that are accept-
24 able to the Board relating to audit service
25 quality control.

1 “(C) PENALTIES.—Violation by a public
2 accounting firm or a person associated with
3 such a firm of a rule of the peer review organi-
4 zation to which the firm belongs shall constitute
5 grounds for—

6 “(i) the imposition of disciplinary
7 sanctions by the Board pursuant to sub-
8 section (f); and

9 “(ii) denial to the public accounting
10 firm or person associated with such firm of
11 the privilege of appearing or practicing be-
12 fore the Commission.

13 “(3) CONFIDENTIALITY.—Except as otherwise
14 provided by this section, all reports, memoranda,
15 and other information provided to the Board solely
16 for purposes of paragraph (2), or to a peer review
17 organization certified by the Board, shall be con-
18 fidential and privileged, unless such confidentiality
19 and privilege are expressly waived by the person or
20 entity that created or provided the information.

21 “(h) COMMISSION OVERSIGHT OF THE BOARD.—

22 “(1) PROPOSED RULE CHANGES.—

23 “(A) IN GENERAL.—The Board shall file
24 with the Commission, in accordance with such
25 rules as the Commission may prescribe, copies

1 of any proposed rule or any proposed change in,
2 addition to, or deletion from the rules of the
3 Board (hereafter in this subsection collectively
4 referred to as a ‘proposed rule change’) accom-
5 panied by a concise general statement of the
6 basis and purpose of such proposed rule
7 change. The Commission shall, upon the filing
8 of any proposed rule change, publish notice
9 thereof together with the terms of substance of
10 the proposed rule change or a description of the
11 subjects and issues involved. The Commission
12 shall give interested persons an opportunity to
13 submit written data, views, and arguments con-
14 cerning the proposed rule change. No proposed
15 rule change shall take effect unless approved by
16 the Commission or otherwise permitted in ac-
17 cordance with this subsection.

18 “(B) APPROVAL OR DISAPPROVAL.—

19 “(i) IN GENERAL.—Not later than 35
20 days after the date on which notice of the
21 filing of a proposed rule change is pub-
22 lished in accordance with subparagraph
23 (A), or such longer period as the Commis-
24 sion may designate (not to exceed 90 days
25 after such date, if it finds such longer pe-

1 riod to be appropriate and publishes its
2 reasons for such finding or as to which the
3 Board consents) the Commission shall—

4 “(I) by order approve such pro-
5 posed rule change; or

6 “(II) institute proceedings to de-
7 termine whether the proposed rule
8 change should be disapproved.

9 “(ii) DISAPPROVAL PROCEEDINGS.—
10 Proceedings for disapproval shall include
11 notice of the grounds for disapproval under
12 consideration and opportunity for hearing
13 and shall be concluded not later than 180
14 days after the date of publication of notice
15 of the filing of the proposed rule change.
16 At the conclusion of the proceedings for
17 disapproval, the Commission, by order,
18 shall approve or disapprove such proposed
19 rule change. The Commission may extend
20 the time for conclusion of such proceedings
21 for—

22 “(I) not more than 60 days, if
23 the Commission finds good cause for
24 such extension and publishes its rea-
25 sons for such finding; or

1 “(II) such longer period to which
2 the Board consents.

3 “(iii) APPROVAL.—The Commission
4 shall approve a proposed rule change if it
5 finds that such proposed rule change is
6 consistent with the requirements of the
7 Federal securities laws, and the rules and
8 regulations issued thereunder, applicable to
9 the Board. The Commission shall dis-
10 approve a proposed rule change if it does
11 not make such finding. The Commission
12 shall not approve any proposed rule change
13 prior to the expiration of the 30-day period
14 beginning on the date on which notice of
15 the filing of a proposed rule change is pub-
16 lished in accordance with this subpara-
17 graph, unless the Commission finds good
18 cause to do so and publishes its reasons
19 for such finding.

20 “(C) EFFECT OF PROPOSED RULE
21 CHANGE.—

22 “(i) EFFECTIVE DATE.—Notwith-
23 standing subparagraph (B), a proposed
24 rule change may take effect upon filing

1 with the Commission if designated by the
2 Board as—

3 “(I) constituting a stated policy,
4 practice, or interpretation with respect
5 to the meaning, administration, or en-
6 forcement of an existing rule of the
7 Board;

8 “(II) establishing or changing a
9 due, fee, or other charge imposed by
10 the Board; or

11 “(III) concerned solely with the
12 administration of the Board or other
13 matters which the Commission, by
14 rule, consistent with the public inter-
15 est and the purposes of this sub-
16 section, may specify.

17 “(ii) SUMMARY EFFECT.—Notwith-
18 standing any other provision of this sub-
19 section, a proposed rule change may be put
20 into effect summarily if it appears to the
21 Commission that such action is necessary
22 for the protection of investors. Any pro-
23 posed rule change put into effect sum-
24 marily shall be filed promptly thereafter in
25 accordance with this paragraph.

“(iii) ENFORCEMENT.—Any proposed rule change which has taken effect pursuant to clause (i) or (ii) may be enforced by the Board to the extent that it is not inconsistent with the Federal securities laws, the rules and regulations issued thereunder, and applicable Federal and State law. During the 60-day period beginning on the date on which notice of the filing of a proposed rule change if filed in accordance with this paragraph, the Commission may summarily abrogate the change in the rules of the Board made thereby and require that the proposed rule change be refiled in accordance with subparagraph (A) and reviewed in accordance with subparagraph (B), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not

1 be reviewable under section 25 of this Act
2 nor deemed to be ‘final agency action’ for
3 purposes of section 704 of title 5, United
4 States Code.

5 “(2) AMENDMENT BY COMMISSION OF RULES
6 OF THE BOARD.—The Commission, by rule, may ab-
7 rogate, add to, and delete from (hereafter in this
8 subsection collectively referred to as ‘amend’) the
9 rules of the Board as the Commission deems nec-
10 essary or appropriate to ensure the fair administra-
11 tion of the Board, to conform its rules to require-
12 ments of the Federal securities laws, and the rules
13 and regulations issued thereunder applicable to the
14 Board, or otherwise in furtherance of the purposes
15 of the Federal securities laws, in the following
16 manner:

17 “(A) PUBLICATION OF NOTICE.—The
18 Commission shall notify the Board and publish
19 notice of the proposed rulemaking in the Fed-
20 eral Register. The notice shall include the text
21 of the proposed amendment to the rules of the
22 Board and a statement of the Commission’s
23 reasons, including any pertinent facts, for com-
24 mencing such proposed rulemaking.

1 “(B) COMMENTS.—The Commission shall
2 give interested persons an opportunity for the
3 oral presentation of data, views, and arguments,
4 in addition to an opportunity to make written
5 submissions. A transcript shall be kept of any
6 oral presentation.

7 “(C) INCORPORATION.—A rule adopted
8 pursuant to this subsection shall incorporate
9 the text of the amendment to the rules of the
10 Board and a statement of the Commission’s
11 basis for and purpose in so amending such
12 rules. Such statement shall include an identi-
13 fication of any facts on which the Commission
14 considers its determination to so amend the
15 rules of the Board to be based, including the
16 reasons for the Commission’s conclusions as to
17 any of the facts that were disputed in the rule-
18 making.

19 “(D) REGULATIONS.—

20 “(i) TITLE 5 APPLICABILITY.—Except
21 as otherwise provided in this paragraph,
22 rulemaking under this paragraph shall be
23 in accordance with the procedures specified
24 in section 553 of title 5, United States
25 Code, for rulemaking not on the record.

1 “(ii) CONSTRUCTION.—Nothing in
 2 this subsection shall be construed to impair
 3 or limit the Commission’s power to make,
 4 modify, or alter the procedures the Com-
 5 mission may follow in making rules and
 6 regulations pursuant to any other author-
 7 ity under the Federal securities laws.

8 “(iii) INCORPORATION OF AMEND-
 9 MENTS.—Any amendment to the rules of
 10 the Board made by the Commission pursu-
 11 ant to this subsection shall be considered
 12 for purposes of the Federal securities laws
 13 to be part of the rules of the Board and
 14 shall not be considered to be a rule of the
 15 Commission.

16 “(3) NOTICE OF DISCIPLINARY ACTION TAKEN
 17 BY THE BOARD; REVIEW OF ACTION BY THE COM-
 18 MISSION.—

19 “(A) NOTICE REQUIRED.—If the Board
 20 imposes a final disciplinary sanction on a public
 21 accounting firm registered with the Board or on
 22 any person associated with such a firm, the
 23 Board shall promptly file notice thereof with
 24 the Commission. The notice shall be in such
 25 form and contain such information as the Com-

mission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of the Federal securities laws.

“(B) REVIEW.—An action with respect to which the Board is required by subparagraph (A) to file notice shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby, filed not later than 30 days after the date on which such notice is filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

1 “(4) DISPOSITION OF REVIEW; CANCELLATION,
2 REDUCTION, OR REMISSION OF SANCTION.—

3 “(A) IN GENERAL.—In any proceeding to
4 review a final disciplinary sanction imposed by
5 the Board on a public accounting firm reg-
6 istered with the Board or a person associated
7 with such a firm, after notice and opportunity
8 for hearing (which hearing may consist solely of
9 consideration of the record before the Board
10 and opportunity for the presentation of sup-
11 porting reasons to affirm, modify, or set aside
12 the sanction)—

13 “(i) if the Commission finds that—

14 “(I) such firm or person associ-
15 ated with such a firm has engaged in
16 such acts or practices, or has omitted
17 such acts, as the Board has found
18 them to have engaged in or omitted;

19 “(II) such acts, practices, or
20 omissions, are in violation of such
21 provisions of the Federal securities
22 laws, the rules or regulations issued
23 thereunder, the rules adopted by the
24 Board, or professional standards as

1 have been specified in the determina-
2 tion of the Board; and

3 “(III) such provisions were ap-
4 plied in a manner consistent with the
5 purposes of the Federal securities
6 laws;

7 the Commission, by order, shall so declare
8 and, as appropriate, affirm the sanction
9 imposed by the Board, modify the sanction
10 in accordance with paragraph (2), or re-
11 mand to the Board for further proceed-
12 ings; or

13 “(ii) if the Commission does not make
14 the findings under clause (i), it shall, by
15 order, set aside the sanction imposed by
16 the Board and, if appropriate, remand to
17 the Board for further proceedings.

18 “(B) CANCELLATION, REDUCTION, OR RE-
19 MISSION OF SANCTION.—If the Commission,
20 having due regard for the public interest and
21 the protection of investors, finds after a pro-
22 ceeding in accordance with subparagraph (A)
23 that a sanction imposed by the Board upon a
24 firm or person associated with a firm imposes
25 any burden on competition not necessary or ap-

1 appropriate in furtherance of the purposes of the
2 Federal securities laws or is excessive or op-
3 pressive, the Commission may cancel, reduce, or
4 require the remission of such sanction.

5 “(5) COMPLIANCE WITH RULES AND REGULA-
6 TIONS.—

7 “(A) DUTIES OF BOARD.—The Board
8 shall—

9 “(i) comply with the Federal securi-
10 ties laws, the rules and regulations issued
11 thereunder, and its own rules; and

12 “(ii) subject to subparagraph (B) and
13 the rules thereunder, absent reasonable
14 justification or excuse, enforce compliance
15 with such provisions and with professional
16 standards by public accounting firms reg-
17 istered with the Board and persons associ-
18 ated with such firms.

19 “(B) RELIEF BY COMMISSION.—The Com-
20 mission, by rule, consistent with the public in-
21 terest, the protection of investors, and the other
22 purposes of the Federal securities laws, may re-
23 lieve the Board of any responsibility under this
24 section to enforce compliance with any specified
25 provision of the Federal securities laws, the

1 rules or regulations issued thereunder, or pro-
2 fessional standards by any public accounting
3 firm registered with the Board or person associ-
4 ated with such a firm, or any class of such
5 firms or persons associated with such a firm.

6 “(6) CENSURE; OTHER SANCTIONS.—

7 “(A) IN GENERAL.—The Commission is
8 authorized, by order, if in its opinion such ac-
9 tion is necessary or appropriate in the public in-
10 terest, for the protection of investors, or other-
11 wise in furtherance of the purposes of the Fed-
12 eral securities laws, to censure or impose limita-
13 tions upon the activities, functions, and oper-
14 ations of the Board, if the Commission finds,
15 on the record after notice and opportunity for
16 hearing, that the Board has—

17 “(i) violated or is unable to comply
18 with any provision of the Federal securities
19 laws, the rules or regulations issued there-
20 under, or its own rules; or

21 “(ii) without reasonable justification
22 or excuse, has failed to enforce compliance
23 with any such provision or any professional
24 standard by a public accounting firm reg-

1 istered with the Board or a person associ-
2 ated with such a firm.

3 “(B) REMOVAL FROM OFFICE.—The Com-
4 mission is authorized, by order, if in its opinion
5 such action is necessary or appropriate, in the
6 public interest for the protection of investors, or
7 otherwise in furtherance of the purposes of the
8 Federal securities laws, to remove from office or
9 censure any member of the Board, if the Com-
10 mission finds, on the record after notice and op-
11 portunity for hearing, that such member has—

12 “(i) willfully violated any provision of
13 the Federal securities laws, the rules or
14 regulations issued thereunder, or the rules
15 of the Board;

16 “(ii) willfully abused such member’s
17 authority; or

18 “(iii) without reasonable justification
19 or excuse, failed to enforce compliance with
20 any such provision or any professional
21 standard by any public accounting firm
22 registered with the Board or any person
23 associated with such a firm.

24 “(i) FOREIGN ACCOUNTING FIRMS.—A foreign public
25 accounting firm that furnishes accountant’s reports on

1 any financial statement, report, or other document re-
 2 quired to be filed with the Commission under any Federal
 3 securities law shall, with respect to those reports, be sub-
 4 ject to the provisions of this section in the same manner
 5 and to the same extent as a domestic public accounting
 6 firm. The Commission may, by rule, regulation, or order
 7 and as it deems consistent with the public interest and
 8 the protection of investors, either unconditionally or upon
 9 specified terms and conditions, exempt from one or more
 10 provisions of this section any foreign public accounting
 11 firm. Registration pursuant to this subsection shall not,
 12 by itself, provide a basis for subjecting foreign accounting
 13 firms to the jurisdiction of the Federal or State courts.

14 “(j) RELATIONSHIP WITH ANTITRUST LAWS.—

15 “(1) TREATMENT UNDER ANTITRUST LAWS.—

16 In no case shall the Board, any member thereof, any
 17 public accounting firm registered with the Board, or
 18 any person associated with such a firm be subject to
 19 liability under any antitrust law for any act of the
 20 Board or any failure to act by the Board.

21 “(2) DEFINITION.—For purposes of this sub-
 22 section, the term ‘antitrust law’ means the Federal
 23 Trade Commission Act and each statute defined by
 24 section 4 thereof as ‘Antitrust Acts’ and all amend-

1 ments to such Act and such statutes and any other
2 Federal Acts or State laws in pari materia.

3 “(k) APPLICABILITY OF AUDITING PRINCIPLES.—
4 Each audit required pursuant to this title of an issuer’s
5 financial statements by an independent public accountant
6 shall be conducted in accordance with generally accepted
7 auditing standards, as may be modified or supplemented
8 from time-to-time by the Commission. The Commission
9 may defer to professional standards promulgated by pri-
10 vate organizations that are generally accepted by the ac-
11 counting or auditing profession.

12 “(l) COMMISSION AUTHORITY NOT IMPAIRED.—
13 Nothing in this section shall be construed to impair or
14 limit the Commission’s authority—

15 “(1) over the accounting profession, accounting
16 firms, or any persons associated with such firms;

17 “(2) to set standards for accounting practices,
18 derived from other provisions of the Federal securi-
19 ties laws or the rules or regulations issued there-
20 under; or

21 “(3) to take, on its own initiative, legal, admin-
22 istrative, or disciplinary action against any public
23 accounting firm registered with the Board or any
24 person associated with such a firm.”.



S 1976 IS—2

S 1976 IS—3

S 1976 IS—4

S 1976 IS—5

S 1976 IS—6